

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

MALIBU MEDIA, LLC,  
Plaintiff,

v.

JOHN DOE subscriber assigned IP Address  
68.32.14.138,  
Defendant.

) Case No. 2:18-cv-14006  
) Hon. Paul D. Borman  
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**ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES**

Defendant, JOHN DOE subscriber assigned IP Address 68.32.14.138, by and through his attorney, JOHN T. HERMANN, hereby responds to Plaintiff's compliant with the answers as follows:

1. Answering, Paragraph 1, Defendant denies the allegations contained therein as they are untrue.

2. Answering, Paragraph 2, Defendant neither admits nor denies the allegation contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

3. Answering, Paragraph 3, Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

4. Answering, Paragraph 4, Defendant denies the allegations contained therein as they are untrue.

5. Answering, Paragraph 5, Defendant denies the allegations contained therein as they are untrue

6. Answering, Paragraph 6, Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

7. Answering, Paragraph 7, Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

8. Answering, Paragraph 8, Defendant denies any act of infringement or other tortious activity.

9. Answering, Paragraph 9, Defendant admits that he is a resident of the state of Michigan residing in the Eastern District of Michigan as to the remaining allegations Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

10. Answering, Paragraph 10, Defendant admits that he is a resident of the state of Michigan residing in the Eastern District of Michigan as to the remaining allegations Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

11. Answering, Paragraph 11, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

12. Answering, Paragraph 12, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

13. Answering, Paragraph 13, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

14. Answering, Paragraph 14, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

15. Answering, Paragraph 15, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

16. Answering, Paragraph 16, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

17. Answering, Paragraph 17, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

18. Answering, Paragraph 18, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

19. Answering, Paragraph 19, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

20. Answering, Paragraph 20, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

21. Answering, Paragraph 21, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

22. Answering, Paragraph 22, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

23. Answering, Paragraph 23, Defendant denies the allegations contained therein as untrue.

24. Answering, Paragraph 24, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

25. Answering, Paragraph 25, Defendant denies the allegations contained therein as untrue.

26. Answering, Paragraph 26, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

27. Answering, Paragraph 27, Defendant denies the allegations contained therein as untrue.

28. Answering, Paragraph 28, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

29. Answering, Paragraph 29, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

30. Answering, Paragraph 30, Defendant denies the allegations contained therein as untrue.

31. Answering, Paragraph 31, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

32. Answering, Paragraph 32, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

33. Answering, Paragraph 33, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

34. Answering, Paragraph 34, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

35. Answering, Paragraph 35, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

36. Answering, Paragraph 36, Defendant denies the allegations contained therein as untrue.

37. Answering, Paragraph 37, Defendants neither admit nor deny the allegations contained therein for lack of sufficient knowledge or information and leaves plaintiff to its proofs.

38. Answering, Paragraph 38, Defendant denies the allegations contained therein as untrue.

39. Answering, Paragraph 39, Defendant denies the allegations contained therein as untrue.

Dated: March 15, 2019

/s/ John T. Hermann

JOHN T. HERMANN (P52858)

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### **NOTICE OF AFFIRMATIVE DEFENSES**

1. Plaintiff's claims may be barred due to its contributory negligence in allowing and/or placing its digital media content to be "seeded" or uploaded into the torrent exchange platform – the same system that it alleges was used to facilitate the unlawful download and/or exchange of its digital copyrighted material.

2. Plaintiff's claims are barred by the doctrine of estoppel in that it directly or through the acts of its agents deliberately participated in "seeding" the torrent exchange platforms with its digital copyrighted material to facilitate and/or promote the exchange of its copyrighted material.

3. Plaintiff's claims are barred under the doctrine of "unclean hands" due to its own illegality in that it directly or through the acts of its agents deliberately participated in "seeding" the torrent exchange platforms with its digital copyrighted material to facilitate and/or promote the exchange of its copyrighted material

4. Plaintiff's Complaint may be barred by its prior license to Defendant in that it directly or through the acts of its agents deliberately participated in "seeding" the torrent exchange platforms with its digital copyrighted material to facilitate and/or promote the exchange of its copyrighted material



5. Plaintiff's Complaint for statutory and/or equitable relief is barred in that works of obscenity are not copyrightable or protected.

6. While defendant denies the allegations of fact and conclusions of law alleged in Plaintiff's complaint, defendant asserts, in the alternative, that any infringement of Plaintiff's work qualifies as an "innocent infringement."

7. While defendant denies the allegations of fact and conclusions of law alleged in Plaintiff's complaint, defendant asserts, in the alternative, that any sharing of Plaintiff's work was a de minimis use in that a functional copy of Plaintiff's work was not transferred.

8. Plaintiff's copyrights are invalid and/or unenforceable.

9. While defendant denies the allegations of fact and conclusions of law alleged in Plaintiff's complaint, defendant asserts, in the alternative, that Plaintiff authorized, impliedly or explicitly, the allegedly infringing sharing of its works via BitTorrent, and the claims are therefore barred by the doctrine of implied license.

9. Plaintiff's claims are barred, in whole or in part, by its License, consent, and acquiescence in that alleged infringing activity. Defendants hereby reserve the right to add, supplement, modify, change or amend any and all of its Affirmative Defenses as the facts and circumstances become known through further discovery and/or investigation.

Dated: March 15, 2019

/s/ John T. Hermann

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### **CERTIFICATE OF COMPLIANCE**

Pursuant to E.D. Mich. LR 5.1(a) I hereby certify that the foregoing has been prepared using one of the font and point selections approved by the Court in E.D. Mich. LR 5.1(a)(3). This document was prepared using Times New Roman (14 pt.).

Dated: March 15, 2019

/s/ John T. Hermann

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**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that I electronically filed the foregoing paper with the Clerk of the Court with the ECF system which will send notification of each filing to the following:

Joel A. Bernier, Esq.

Dated: March 15, 2019

/s/ John T. Hermann

JOHN T. HERMANN (P52858)

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